

Garrett S. Ledgerwood, OSB No. 143701
garrett.ledgerwood@millernash.com
MILLER NASH LLP
3400 U.S. Bancorp Tower
111 S.W. Fifth Avenue
Portland, Oregon 97204
Telephone: 503.224.5858
Fax: 503.224.0155

Attorney for Creditors Solomon Management, Inc.
and Robert D. Solomon, in his capacity as Trustee of
the Mervin Solomon GST Trust UW 9-28-2008

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

EDWARD A. ARINIELLO, JR.,

Debtor.

Case No. 21-31142-dwh11

Chapter 11

**JOINT OBJECTION OF SOLOMON
MANAGEMENT, INC. AND ROBERT D.
SOLOMON TO DEBTOR'S HOMESTEAD
EXEMPTION**

Solomon Management, Inc. ("***Solomon Management***") and Robert D. Solomon,
in his capacity as Trustee of the Mervin Solomon GST Trust UW 9-29-2008 ("***Solomon***"), object
to the Debtor's claimed homestead exemption. In support of this Objection, Solomon
Management and Mr. Solomon allege and state as follows:

BACKGROUND

On November 17, 2020, the Debtor voluntarily conveyed his entire interest in his principal residence known as 29455 SW Heater Road, Sherwood, Oregon 97140 (the “**Residence**”) into the name of his wife, Carrie M. Lattimer-Ariniello, for no consideration. On May 17, 2021 (the “**Petition Date**”), the Debtor filed a voluntary petition in this Court for relief under chapter 11 of the United States Bankruptcy Code. On June 1, 2021, the Debtor filed his schedules (Dkt. No. 19, the “**Schedules**”). In the Schedules, the Debtor claims a homestead exemption of \$40,000 in the Residence, based upon an “Equitable Interest” in the Residence. The Debtor’s schedules include no lease or other legal right allowing the Debtor to occupy the Residence. The transfer of the Residence from the Debtor to his spouse was voluntary.

OBJECTION

Under Oregon law, a homestead exemption only extends to a homestead or its proceeds. ORS 18.395. While Oregon’s homestead exemption statute does not define the term “homestead,” the term is defined in the property tax provisions as follows: (i) “‘Homestead’ means the **owner** occupied principal dwelling, either real or personal property, **owned** by the taxpayer and the tax lot upon which it is located.” ORS 311.666(2) (emphasis added); and (ii) “As used in this section, ‘homestead’ means residential property that is **owned** by a person described in subsection (1) of this section and that, but for military service, would be occupied as a residence by the person.” ORS 370.286(3) (emphasis added). Importantly, in both instances, some form of ownership is required.

In construing what it means to “own” property for purposes of Oregon’s homestead exemption, Courts have held that, at a minimum, it must include some right to possession. *See In re Casserino*, 379 F.3d 1069, 1073 (9th Cir. 2004); *White v. White*, 727 F.2d. 884, 886-87 (9th Cir. 1984) (finding that a judgment lien was an insufficient ownership interest because it carried with it no right to possession); *Troutman v. Erlandson*, 44 Or. App. 239, 245

(finding the homestead exemption applied where partnership dissolution decree granted individual an option to purchase property with the right to possession prior to option's expiration); *but see Fiet v. O'Dwyer*, Civil No. 85–984LE (D. Or. 1985) (unpublished). Here, the Debtor has not scheduled any legal right to possession of the Residence, including any lease in Schedule G. Rather, the Debtor appears to rely on some purported equitable interest remaining in the Residence without any express pre-petition agreement providing the Debtor with any ownership or possessory right. This is an insufficient ownership interest to allow the Debtor to claim an exemption in the Residence.

CONCLUSION

For the foregoing reasons, Solomon Management and Mr. Solomon object to the Debtor's claimed homestead exemption and request that it be disallowed.

DATED this 3rd day of January, 2022.

MILLER NASH LLP

/s/ Garrett S. Ledgerwood

Garrett S. Ledgerwood

OSB No. 143701

garrett.ledgerwood@millernash.com

Phone: 503.224.5858

Fax: 503.224.0155

Attorney for Creditors Solomon Management,
Inc. and Robert D. Solomon, in his capacity as
Trustee of the Mervin Solomon GST Trust UW 9-
28-2008

I hereby certify that I served the foregoing JOINT OBJECTION OF SOLOMON MANAGEMENT, INC. AND ROBERT D. SOLOMON TO DEBTOR'S HOMESTEAD EXEMPTION on:

- NICHOLAS J. HENDERSON nhenderson@portlaw.com

by the following indicated method or methods on the date set forth below:

- ☒ **CM/ECF system transmission.**
- ☐ **E-mail.** As required by Local Rule 5.2, any interrogatories, requests for production, or requests for admission were e-mailed in Word or WordPerfect format, not in PDF, unless otherwise agreed to by the parties.
- ☐ **Facsimile communication device.**
- ☐ **First-class mail, postage prepaid.**
- ☐ **Hand-delivery.**
- ☐ **Overnight courier, delivery prepaid.**

and, on the same day, I served the foregoing JOINT OBJECTION OF SOLOMON MANAGEMENT, INC. AND ROBERT D. SOLOMON TO DEBTOR'S HOMESTEAD EXEMPTION on the following by First-class mail, postage prepaid:

Edward A. Ariniello, Jr.
29455 SW Heater Rd.
Sherwood, OR 97140

DATED this 3rd day of January, 2022.

/s/ Garrett S. Ledgerwood

Garrett S. Ledgerwood
Oregon State Bar No. 143701
Attorney for Creditors Solomon Management,
Inc. and Robert D. Solomon, in his capacity as
Trustee of the Mervin Solomon GST Trust UW
9-28-2008